

Plaintiffs' Exhibit 23

From: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>
Sent: Thursday, November 11, 2021 4:46 PM
To: Derek Loeser; Daniel Garrie
Cc: Gail Andler (judgeandler@icloud.com); Stein, Deborah L.; Falconer, Russ; Lesley Weaver; Anne Davis; Matt Melamed; David Ko; Snyder, Orin; Cari Laufenberg; Chris Springer; Mumm, Laura C.
Subject: Re: In re Facebook: ADI Hearing

Hi Derek,

We provided a detailed position on each of the categories of materials Plaintiffs demanded in our November 4 submission. In that submission, we also laid out in great detail our position on Plaintiffs' demand for various types of reports and memoranda, including reports and memoranda not addressed by Judge Corley's order. Please see pages 2-3 of our submission.

Best,
Martie

Martie Kutscher Clark

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5348 • Fax +1 650.849.5048
MKutscherClark@gibsondunn.com • www.gibsondunn.com

From: Derek Loeser <dloeser@KellerRohrback.com>
Date: Wednesday, November 10, 2021 at 9:35 AM
To: Daniel Garrie <DGarrie@jamsadr.com>
Cc: "Gail Andler (judgeandler@icloud.com)" <judgeandler@icloud.com>, "Stein, Deborah L." <DStein@gibsondunn.com>, "Falconer, Russ" <RFalconer@gibsondunn.com>, Lesley Weaver <lweaver@bfalaw.com>, Anne Davis <adavis@bfalaw.com>, Matt Melamed <mmelamed@bfalaw.com>, David Ko <dko@KellerRohrback.com>, "Snyder, Orin" <OSnyder@gibsondunn.com>, Cari Laufenberg <cлаufenberg@KellerRohrback.com>, Chris Springer <cspringer@KellerRohrback.com>, "Kutscher Clark, Martie" <MKutscherClark@gibsondunn.com>, "Mumm, Laura C." <LMumm@gibsondunn.com>
Subject: Re: In re Facebook: ADI Hearing

[WARNING: External Email]

Dear Special Master Garrie,

Judge Corley's Order Granting Motion to Compel ADI Materials, entered on September 9, 2021, concerns critical discovery in this case that should have been disclosed long ago. Your Honor initially proposed conducting the ADI hearing on 10/29, 11/1 or 11/2. At FB counsel's request, the hearing was not scheduled on any of those dates, or earlier, and was instead scheduled for 11/11. Facebook indicated that it was not available on 11/11 and Your Honor proposed moving the hearing to 11/13, 11/14, 11/28, or 11/29. FB

responded that none of those dates worked either, and the Special Master is now required to find yet another date that works for Facebook, apparently in December. Plaintiffs are deeply concerned about Facebook's delayed production of the ADI materials.

Plaintiffs propose that Facebook be required to take steps now to ameliorate the prejudice to Plaintiffs caused by this delay. Specifically:

1. Facebook stated in its 10/22 Supplemental Submission re ADI that by the week of October 25 it would provide Plaintiffs with its "preliminary position" on materials it "may be able to produce." Facebook failed to do so, and should be ordered to provide a description in writing immediately of the materials it believes are required by the ADI Order. Facebook has now had more than 60 days to consider what documents the September 9 Order required it to produce.
2. Facebook should also be ordered to produce category 1 of the documents described in Plaintiffs' October 22 submission concerning the ADI Issues: all memoranda prepared by FTI Consulting or Stroz Friedberg related to phases two or three of the ADI, by November 12. Facebook has already determined these memoranda are responsive to the ADI Order, as demonstrated by its decision to produce them for the six exemplar apps that were the subject of the parties' briefing. There can be no legitimate dispute that the production of those memoranda is consistent with the ADI Order.

Respectfully,

Derek W. Loeser
Keller Rohrback L.L.P.
Main: (206) 623-1900
Direct: (206) 224-7562
Mobile: (206) 419-2198
E-mail: dloeser@kelleroahrback.com
Web site: <http://www.krcomplexlit.com>

CONFIDENTIALITY NOTE: This Electronic Message contains information belonging to the law firm of Keller Rohrback L.L.P., which may be privileged, confidential and protected from disclosure. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this message is strictly prohibited.

From: Daniel Garrie <DGarie@jamsadr.com>
Date: Tuesday, November 9, 2021 at 6:59 PM
To: Snyder, Orin <OSnyder@gibsondunn.com>
Cc: Gail Andler (judgeandler@icloud.com) <judgeandler@icloud.com>, Stein, Deborah L. <DStein@gibsondunn.com>, Falconer, Russ <RFalconer@gibsondunn.com>, Lesley Weaver <lweaver@bfalaw.com>, Anne Davis <adavis@bfalaw.com>, Matt Melamed <mamelamed@bfalaw.com>, Derek Loeser <dloeser@KellerRohrback.com>, David Ko <dko@KellerRohrback.com>, Cari Laufenberg <cclaufenberg@KellerRohrback.com>, Chris Springer <ccspringer@KellerRohrback.com>, Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>, Mumm, Laura C. <LMumm@gibsondunn.com>, Daniel Garrie <DGarie@jamsadr.com>
Subject: Re: In re Facebook: ADI Hearing

Oren,

I will grant one final extension. I will provide dates tomorrow.

Special Master Daniel Garrie

Get [Outlook for Android](#)

From: Snyder, Orin <OSnyder@gibsondunn.com>
Sent: Tuesday, November 9, 2021 6:06:34 PM
To: Daniel Garrie <DGarrie@jamsadr.com>
Cc: Gail Andler (judgeandler@icloud.com) <judgeandler@icloud.com>; Stein, Deborah L. <DStein@gibsondunn.com>; Falconer, Russ <RFalconer@gibsondunn.com>; Mumm, Laura C. <LMumm@gibsondunn.com>; Lesley Weaver <lweaver@bfalaw.com>; Anne Davis <adavis@bfalaw.com>; Matthew Melamed <mmelamed@bfalaw.com>; Derek Loeser <dloeser@kellerrohrback.com>; David Ko <dko@kellerrohrback.com>; Cari Laufenberg <cclaufenberg@kellerrohrback.com>; Chris Springer <cspringer@kellerrohrback.com>; Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>
Subject: Re: In re Facebook: ADI Hearing

Dear Mr. Garrie,

I am following up about the scheduling of the ADI hearing. As you know, I am lead counsel and am in the midst of a major jury trial in New York. For a number of reasons, the trial is proceeding slower than expected. I am managing a team of dozens of lawyers and the stakes are extremely high for my clients in this case, which has been pending for more than three years. I am conducting the major cross-examinations and will deliver the summation at the end of the case. Having to conduct a multi-hour hearing in another matter in the middle of this trial will impose a significant hardship on me and my client. When we are not on trial, we are working late into the night, including 12 to 15 hours over the weekends. I understand that you have indicated that delaying the ADI hearing until the first week of December is "not tenable." I respect the Special Master process in our case and regret asking you to kindly reconsider. I would be deeply appreciative if the ADI hearing can be scheduled for either the latter part of the week of November 29 or the following weekend or the following week. This would enable me to discharge my professional obligations to my clients at trial. I'm sorry to raise and burden you with this scheduling issue again. Thank you for your kind consideration.

Sincerely,

Orin Snyder

Sent from my iPhone

On Nov 2, 2021, at 6:54 PM, Snyder, Orin <OSnyder@gibsondunn.com> wrote:

Mr. Garrie,

I hope you are well.

I'm reaching out about the ADI hearing. As my team explained, I am lead counsel in a jury trial that started yesterday. It is a \$2 billion case for the founders of Tinder and is pending in New York state court. The case has been ongoing for three years. I thought, perhaps naively, that I would be able to participate in an ADI hearing on November 11 and appreciate your flexibility. Unfortunately, that date now conflicts with the trial—it will be in the middle of my cross-examination of the key witness in the case, and I will need to spend the entire day in active witness prep. I cannot responsibly take half of that day to prepare for and conduct an important hearing in this matter.

The judge in Tinder has told the parties that the trial should conclude before Thanksgiving, although it might bleed into the following week. Under the circumstances, I would respectfully request that the ADI hearing be scheduled for the first week of December.

As you know, I have been lead counsel in this case since inception. My client, understandably, wants me to handle the ADI hearing given the importance of the matters at issue. I'm hoping that in the grand scheme of this case, deferring the hearing a few weeks will be acceptable so that I can satisfy my professional obligations without undue inference with the best interests of my clients.

I thank you for your kind consideration.

Orin

Orin Snyder

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
200 Park Avenue, New York, NY 10166-0193
Tel +1 212.351.2400 • Fax +1 212.351.6335
OSnyder@gibsondunn.com • www.gibsondunn.com

This message may contain confidential and privileged information for the sole use of the intended recipient. Any review, disclosure, distribution by others or forwarding without express permission is strictly prohibited. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

Please see our website at <https://www.gibsondunn.com/> for information regarding the firm and/or our privacy policy.

This message may contain confidential and privileged information for the sole use of the intended recipient. Any review, disclosure, distribution by others or forwarding without express permission is strictly prohibited. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

Please see our website at <https://www.gibsondunn.com/> for information regarding the firm and/or our privacy policy.
